

subsequent years the State receives a basic grant as provided in paragraph (d)(2)(ii) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's community programs that would affect compliance with Section 410 or a copy of any changes to the State's programs.

[57 FR 29011, June 30, 1992, as amended at 58 FR 21656, Apr. 23, 1993; 61 FR 9104, Mar. 7, 1996; 61 FR 55222, Oct. 25, 1996]

**§ 1313.6 Requirements for supplemental grants.**

(a) *Program making unlawful open containers and consumption of alcohol in motor vehicles.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and make unlawful the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except:

(i) As allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(ii) As otherwise specifically allowed by such State, with the approval of NHTSA, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger area.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a supplemental grant under this paragraph, a State shall submit a law, regulation, binding policy directive implementing or interpreting an existing law or regulation, which provides for each element of the unlawful open container and anti-consumption of alcohol requirement. The State shall also identify and provide sufficient justification for the agency to approve any exception, other than the exception that is specifically permitted under subparagraph (b)(1)(i) of this section.

(ii) To demonstrate compliance in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit, in addition to the information identified in paragraph (b)(2)(i) of this section, information showing that it is actively enforcing its open container and anti-consumption statute.

(b) *Suspension of registration and return of license plate program.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who:

(i) Has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period beginning after December 18, 1991; or

(ii) Has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for an alcohol-related traffic offense; except that

(iii) A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender. Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which license plates may be released by the State or under statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in unrestricted return of the motor vehicle, unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

(2)(i) To demonstrate compliance in the first year the State receives a supplemental grant under this paragraph, the State shall submit a copy of the

law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the registration suspension and license plate return requirement.

(ii) To demonstrate compliance in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit, in addition to the information identified in paragraph (c)(2)(i) of this section, data showing the number of registrations suspended and license plates returned under the State law, that the average length of the term for which the registration was suspended and the license plates returned meets the definition in § 1313.3(l), and the number, reasons for and conditions under which hardship exemptions were granted. The State must show that it is actively enforcing its law and that the hardship exceptions do not result in unrestricted return of the motor vehicle, unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle. The State can provide the necessary data based on a representative sample.

(iii) If the State does not provide for the suspension of the registration and the return of the license plate, the State can demonstrate compliance with this element by showing that it instead provides for the immobilization, impoundment or confiscation of the vehicle.

(c) *Mandatory alcohol concentration testing program.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for mandatory alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a crash resulting in the loss of human life or serious bodily injury has committed an alcohol-related traffic offense.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a supplemental grant under this paragraph, a Law State shall submit a copy

of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory testing requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Law State shall submit, in addition to the information in paragraph (d)(2)(i) of this section, data showing the number of drivers involved in these crashes and that, when there was probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample or surrogate measure.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, including the requirement that enforcement officers must order and offenders must submit to testing upon a finding of probable cause.

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for the alcohol concentration testing requirement. The State shall also submit data showing the number of drivers involved in these crashes and that, when there is probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample or surrogate measure.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, except

that enforcement officers may be authorized rather than required by law to order and offenders may be permitted to refuse to submit to testing upon a finding of probable cause.

(d) *Drugged driving prevention.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and

(i) Provide for law concerning drugged driving under which:

(A) A person shall not drive or be in actual physical control of a motor vehicle while under the influence of alcohol, a controlled substance, a combination of controlled substances or any combination of alcohol and controlled substances;

(B) Any person who operates a motor vehicle upon the highways of the State shall be deemed to have given consent to a test or tests of his or her blood, breath or urine for the purpose of determining the alcohol concentration or the presence of controlled substances in his or her body; and

(C) The driver's license of a person shall be suspended promptly, for a period of not less than 90 days in the case of a first offender and not less than one year in the case of any repeat offender, when a law enforcement officer has probable cause under State law to believe such person has committed a traffic offense relating to controlled substances use, and such person is determined, on the basis of one or more tests, to have been under the influence of controlled substances while operating a motor vehicle, or refuses to submit to such a test as proposed by the officer;

(ii) Have in effect a law which provides that:

(A) Any person convicted of a first violation of driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory license suspension for a period of not less than 90 days and either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

(B) Any person convicted of a second violation of driving under the influence

of controlled substances or alcohol, or both, within five years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than one year;

(C) Any person convicted of a third or subsequent violation of driving under the influence of controlled substances or alcohol, or both, within five years after a prior conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 120 days and have his or her license revoked for not less than three years; and

(D) Any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license;

(iii) Provide for an effective system for:

(A) The detection of driving under the influence of controlled substances;

(B) The administration of a test or tests to any driver who a law enforcement officer has probable cause under State law to believe has committed a traffic offense relating to controlled substances use; and

(C) In instances where such probable cause exists, the prosecution of those persons who are determined, on the basis of one or more tests, to have been operating a motor vehicle while under the influence of controlled substances and those persons who refuse to submit to such a test as proposed by a law enforcement officer; and

(iv) Have in effect two of the following programs:

(A) An effective educational program for the prevention of driving under the influence of controlled substances.

(B) An effective program for training law enforcement officers to detect driving under the influence of controlled substances.

(C) An effective program for the rehabilitation and treatment of those convicted of driving under the influence of controlled substances.

(2) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a State shall submit:

(i) A law, regulation, binding policy directive implementing or interpreting an existing law or regulation, which provides for each element of paragraphs (e)(1)(i) and (ii) of this section;

(ii) Evidence of the State's participation in the Drug Evaluation and Classification program or an equivalent program meeting standards for such program established by the International Association of Chiefs of Police;

(iii) Information and data showing that persons who fail or refuse to submit to required tests are being prosecuted; and

(iv) A description of either the State's drug education program or the State's drug treatment and rehabilitation program.

(3) *Prompt* means that the period of time from arrest to suspension of a driver's license does not exceed 45 days or does not exceed 90 days and the State submits a plan showing how it intends to achieve a 45-day average.

(e) *Per se level of 0.08.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992 in each of the first three fiscal years in which a basic grant is received beginning after September 30, 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of §1313.5, and provide that any person with an alcohol concentration of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(2) To demonstrate compliance in the first and in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit a copy of its law adopting this requirement.

(f) *Video equipment program.* (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must

have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of §1313.5, and provide for a program:

(i) To acquire video equipment to be installed in police vehicles and used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance;

(ii) To effectively prosecute those persons; and

(iii) To train personnel in the use of that equipment.

(2) To demonstrate compliance in the first year the State receives a supplemental grant under this paragraph, the State shall submit a plan for the acquisition and use of video equipment in police vehicles for the enforcement of impaired driving laws, including:

(i) A schedule for the areas where the equipment has been and will be installed and used;

(ii) A plan for training enforcement personnel, prosecutors and judges in the use of this equipment; and

(iii) A plan for public information and education programs to enhance the deterrent effect of the equipment.

(3) To demonstrate compliance in subsequent years, the State shall submit information and data on the use and effectiveness of the equipment, and an updated plan for any acquisition and use of additional equipment.

(g) *Subsequent year submissions.* (1) In lieu of resubmitting its laws, regulations or binding policy directives to demonstrate compliance in subsequent years the State receives a supplemental grant as provided in paragraphs (a)(2)(ii), (b)(2)(ii), (c)(2)(ii), (c)(3)(i), (d)(2)(i), or (e)(2) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's laws, regulations or binding policy directives that would affect compliance with Section 410 or a copy of any amendments to the State's laws, regulations or binding policy directives.

(2) In lieu of resubmitting a plan or a description of its program in subsequent years the State receives a supplemental grant as provided in paragraph (d)(2)(iv) or (f)(3) of this section, the State may submit either a statement certifying that there have been

no substantive changes in the State's plan or program that would affect compliance with Section 410 or a copy of any changes to the State's plan or program.

[57 FR 29011, June 30, 1992, as amended at 58 FR 21655, 21657, Apr. 23, 1993; 59 FR 40474, Aug. 9, 1994; 61 FR 9104, Mar. 7, 1996; 61 FR 55222, Oct. 25, 1996]

#### § 1313.7 Award procedures.

In each Federal fiscal year, grants will be made to eligible States upon submission and approval of the application and drunk driving prevention plan required by § 1313.4(a) and subject to the limitations in § 1313.4(b). The release of the full grant amounts shall be subject to the availability of funding for that fiscal year. If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA may release less than the full grant amounts upon initial approval of the State's application and plan and the remainder of the full grant amounts, up to the State's proportionate share of available funds, before the end of that fiscal year. Project approval, and the contractual obligation of the Federal government to provide grant funds, shall be limited to the amount of funds released.

[58 FR 21657, Apr. 23, 1993]

#### § 1313.8 States eligible under 410 prior to September 30, 1992.

(a) A State which, before December 18, 1991, was eligible to receive a grant under 23 U.S.C. 410, and its implementing regulation, as in effect on December 17, 1991, may elect to receive in a fiscal year grants under such section 410, and implementing regulation, as so in effect, in lieu of receiving in such fiscal year grants under section 410, as amended, and this regulation, except that such States shall be subject to § 1313.7 of this regulation.

(b) A State that received a basic grant, under section 410, after December 18, 1991 and on or before September 30, 1992, and that continues to meet the criteria for a basic grant, as in effect on September 30, 1992, shall be eligible

for a basic grant under section 410, as amended on October 6, 1992.

[58 FR 21657, Apr. 23, 1993]

### PART 1325—TRANSITION PROCEDURES FROM CURRENT TO NEW NATIONAL DRIVER REGISTER

Sec.

1325.1 Scope.

1325.2 Purpose.

1325.3 Definitions.

1325.4 General transition procedures.

AUTHORITY: Pub. L. 97-364, 96 Stat. 1740, as amended (23 U.S.C. 401 note).

#### § 1325.1 Scope.

This rule provides procedures, in accordance with section 203(c)(1) of the National Driver Register Act of 1982 (Pub. L. 97-364), for the orderly transition from the system regarding the motor vehicle driving records of individuals as provided in Pub. L. 86-660 as amended (current NDR), to the system established in Pub. L. 97-364 (new NDR).

[50 FR 28196, July 11, 1985]

#### § 1325.2 Purpose.

The purpose of this rule is to provide States with information concerning the procedures which the National Highway Traffic Safety Administration plans to follow to implement the new National Driver Register. This will ensure that participating States understand their rights and obligations during the transitional period which will commence on the effective date of this rule and will terminate upon the establishment of a fully electronic Register system, but not later than April 30, 1995.

[50 FR 28196, July 11, 1985, as amended at 56 FR 41403, Aug. 20, 1991]

#### § 1325.3 Definitions.

(a) *Problem Driver Pointer System (PDPS)*. System whereby the NDR serves as a conduit for retrieving information from the State which took adverse action against a driver (State of Record) and relaying that information, without interception, to the State requesting the information (State of Inquiry).